

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

(1) STATE OF OKLAHOMA, ex rel.)
Department of Transportation,)

Plaintiff,)

vs.)

Case No. (**10-CV-660-JHP-FHM**

(1) BNSF RAILWAY COMPANY a/k/a)
NORTHERN SANTA FE RAILWAY)
COMPANY;)

(2) LAMAR OUTDOOR ADVERTISING)
a/k/a LAMAR ADVERTISING OF)
OKLAHOMA, INC.; and the)

(3) TULSA COUNTY TREASURER,)

Defendants.)

NOTICE OF REMOVAL

Please take notice that the above-captioned case, filed as Case Number CJ-2010-5735, in the District Court of Tulsa County, State of Oklahoma, styled *State of Oklahoma, ex rel. Oklahoma Department of Transportation v. BNSF Railway Company a/k/a Northern Santa Fe Railway Company; Lamar Outdoor Advertising a/k/a Lamar Advertising of Oklahoma, Inc.; and the Tulsa County Treasurer*, has been removed by the defendant, BNSF Railway Company ("BNSF") pursuant to 28 U.S.C. § 1441 to the United States District Court for the Northern District of Oklahoma. As grounds for this Notice of Removal, BNSF states the following:

1. Plaintiff filed its initial Petition seeking condemnation of BNSF property interests through the power of eminent domain in State Court on September 13, 2010.

2. BNSF was provided with this Petition by certified mail, postmarked September 14, 2010 and received by BNSF representatives for service of process on September 15, 2010. This removal is therefore timely until October 15, 2010, under 28 U.S.C. § 1446(b).

3. Plaintiff's Petition seeks to acquire interests in real property maintained in Tulsa County, Oklahoma by Defendant BNSF. Tulsa County is within the territory of the federal Northern District of Oklahoma. Removal to this Court is therefore proper under 28 U.S.C. § 1446(a).

4. Defendant Treasurer of Tulsa County, Oklahoma is a nominal party to this action, from which consent to removal is not required under 28 U.S.C. §1446. No cause of action is filed against the Treasurer of Tulsa County by Plaintiff, and the Treasurer of Tulsa County is being included as a Defendant merely in order to effectuate proper allocation of tax assessment among the real parties in interest in the litigation. BNSF will pay or protect payment of any real property taxes it owes to Tulsa County as a result of the eventual outcome of this litigation. Defendant Treasurer of Tulsa County, Oklahoma has no objection to this removal and does not dispute the characterization of it as a nominal party to this action. Defendant Treasurer of Tulsa County has also not been yet served with process in this action.

5. Defendant Lamar Outdoor Advertising has expressed its consents to this removal and will file its written confirmation of consent within 30 days as required under 28 U.S.C. §1446.

6. The land in question in this eminent domain action contains within it property used by BNSF as a rail carrier, within the meaning of 49 U.S.C. § 10102(5), in interstate railroad transportation. This brings the subject land within the purview of the federal Interstate Commerce Commission Termination Act ("ICCTA") and other federal railroad statutes.

7. Regulation of transportation by rail carriers – as well as the construction, acquisition, or discontinuance of any railroad track subject to the ICCTA – is exclusively assigned to the federal Surface Transportation Board under 49 U.S.C. § 10501(b). All other remedies under federal and state law are preempted under this provision.

8. Plaintiff's eminent domain action therefore revolves around issues of federal law, raising federal question jurisdiction in this case under 28 U.S.C. § 1331.

9. While Plaintiffs' Petition styles its claims as matters of state law, federal courts retain the authority to retain removed cases under federal question jurisdiction where federal law completely preempts the issue in question. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393, 107 S.Ct. 2425, 2430, 96 L.Ed.2d 318 (1987). See also *Cassel v. Webco Industries, Inc.*, 942 F.Supp. 1409, 1410-11 (N.D. Okla. 1996) and cases cited therein; *Wright, Miller and Cooper*, FEDERAL PRACTICE AND PROCEDURE § 3722.1 n.1.

10. Railroad regulation has been completely preempted under the ICCTA in cases where eminent domain proceedings threaten to unreasonably interfere with railroad operations, qualifying such actions for removal regardless of the nature of plaintiff's state-law complaint. See, e.g., *PCI Transportation, Inc. v. Fort Worth & Western Railroad Co.*, 418 F.3d 535, 543-45 (5th Cir. 2005); *Deford v. Soo Line Railroad Co.*, 867 F.2d 1080, 1084 (8th Cir. 1999) (predecessor of ICCTA); *South Dakota v. Burlington Northern & Santa Fe Railway Co.*, 280 F.Supp.2d 919, 932-33 (D.C. S.D. 2003) (citing evidence of Congressional intent in legislative history to completely preempt state law claims); *Cedarapids, Inc. v. Chicago, Central, & Pacific Railroad Co.*, 265 F.Supp.2d 1005, 1009-13 (N.D. Iowa 2003); *Maumee & W. R.R. Corp.*, 2004 WL 395835, STB Fin. Docket No. 34354 (S.T.B. March 3, 2004). In this case the eminent domain proceedings threaten to unreasonably

interfere with BNSF's railroad operations, in that: (i) the construction of facilities pursuant to such condemnation will or may interfere with BNSF's Texas Belt Track, in that such plans call for the construction of a high-speed rail line intersection over such track, at grade, which high-speed crossing is not capable of being managed through BNSF's current switching operations and therefore requires grade-separated crossing for safety within the rail system, (ii) the construction of facilities pursuant to such condemnation will require the cessation of traffic over the Texas Belt Track at times and durations indeterminate, disrupting rail traffic to the south of the condemnation area which serves vital national interests, including an oil refinery to the south of the condemnation area as well as a electric generation facility of Public Service Company of Oklahoma, (iii) the construction of facilities pursuant to such condemnation will require, even at times not requiring the cessation of traffic, the need for flag crews and other traffic safety measures not specified or agreed to by Plaintiff in any comprehensive construction and management plan approved by BNSF, and (iv) Plaintiff's current construction plans call for the creation of a second rail spur connection to the Texas Belt Line, to the east of the condemnation area, such connection of which with BNSF's main line will require a further grade-separated crossing over the contemplated high-speed line, engineering plans for which are not available at this time, which situation stands to make the contemplated spur unuseful and/or unintegratable into BNSF's current rail system.

11. Pursuant to 28 U.S.C. §1446(a), attached to this Notice of Removal are all process, pleadings, and orders which have been received by BNSF in this action, namely:

- (i) a certified copy of the docket sheet in the state court matter,
- (ii) Plaintiff's Petition, filed September 13, 2010,

- (iii) Notice to Defendants of hearing to take place on September 29, 2010, filed contemporaneously with the Petition,
- (iv) Plaintiff's Amended Petition filed September 23, 2010,
- (v) Amended notice of hearing to take place on September 29, 2010, filed contemporaneously with the Amended Petition,
- (vi) the Entry of Appearance by Richard M. Fogg on behalf of the Plaintiff,
- (vii) the Order Appointing Commissioners in this case, filed September 29, 2010.

12. In addition to serving all parties with this Notice of Removal, BNSF will promptly file a Notice of Notice of Removal with the Oklahoma District Court for Tulsa County, Oklahoma.

13. Filed contemporaneously herewith are also:

- (i) BNSF's Civil Cover Sheet,
- (ii) BNSF's Status Report on Removed Action,
- (iii) The Entry of Appearance of William P. Tunell, Jr. on behalf of BNSF.

WHEREFORE, Defendant BNSF Railroad Company hereby removes this action for further proceedings according to applicable law.

DATED this 15th of October, 2010.

Respectfully submitted,

By: s/ William P. Tunell, Jr., OBA #17202
THE RAINEY LAW FIRM
105 N. Hudson, Suite 650
Oklahoma City, Oklahoma 73102
(405) 235-1356 (phone)
(405) 235-2340 (facsimile)
ATTORNEYS FOR DEFENDANT
BNSF RAILWAY COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, this 15 day of October 2010, to the following:

Robert E. Grantham
200 N.E. 21st Street
Oklahoma City, Oklahoma 73105
Attorney for Plaintiff
State of Oklahoma
ex rel. Oklahoma Department of Transportation

Richard M. Fogg
Fogg Law Firm
421 S. Rock Island Ave.
El Reno, Oklahoma 73036
Attorney for Plaintiff
State of Oklahoma
ex rel. Oklahoma Department of Transportation

J. Dennis Semler
3rd Floor, County Administration Building
500 S. Denver Avenue
Tulsa, Oklahoma 74103
Attorney for Defendant
Treasurer of Tulsa County

William H. Hickman
Hickman & Fitzpatrick, PLLC
119 N. Robinson, Suite 300
Oklahoma City, Oklahoma 73102-4620
Attorney for Defendant
Lamar Outdoor Advertising

s/ William P. Tunell, Jr.



The information on this page is NOT an official record. Do not rely on the correctness or completeness of this information. Verify all information with the official record keeper. The information contained in this report is provided in compliance with the Oklahoma Open Records Act, [51 O.S. 24A.1](#). Use of this information is governed by this act, as well as other applicable state and federal laws.

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

| | |
|---|---|
| DEPARTMENT OF TRANSPORTATION, Plaintiff, v. BNSF RAILWAY COMPANY, AKA NORTHERN SANTA FE RAILWAY COMPANY, Defendant, and LAMAR OUTDOOR ADVERTISING, AKA LAMAR ADVERTISING OF OKLAHOMA INC, Defendant, and TULSA COUNTY TREASURER, Defendant. | No. CJ-2010-5735 (Civil relief more than \$10,000: CONDEMNATION) Filed: 09/13/2010 Judge: Kuehn, Dana |
|---|---|

Parties

BNSF RAILWAY COMPANY , Defendant
DEPARTMENT OF TRANSPORTATION , Plaintiff
LAMAR OUTDOOR ADVERTISING , Defendant
TULSA COUNTY TREASURER , Defendant

Attorneys**Attorney**

FOGG, RICHARD M(Bar # 2998)
FOGG LAW FIRM
421 S. ROCK ISLAND
EL RENO, OK 73036

Grantham, Robert Edward(Bar # 3536)
200 NE 21ST STREET
ROOM 3D1
OKLAHOMA CITY, OK 73105

HICKMAN, WILLIAM H(Bar # 18395)
HICKMAN & FITZPATRICK
119 NORTH ROBINSON, SUITE 300
OKC, OK 73102

Represented Parties

DEPARTMENT OF TRANSPORTATION,

DEPARTMENT OF TRANSPORTATION,

LAMAR OUTDOOR ADVERTISING,

Events**Event**

Wednesday, September 29, 2010 at 9:15 AM
Appointment of commissioners(HEA)

Party**Docket**

Dana Kuehn

Reporter**Issues**

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

Issue # 1.

Issue: CONDEMNATION (CONDEMN)
Filed by: DEPARTMENT OF TRANSPORTATION

Party Name:

Filed Date: 09/13/2010

Disposition Information:**Defendant:** BNSF RAILWAY COMPANY

Pending.




Defendant: LAMAR OUTDOOR ADVERTISING

Pending.


Defendant: TULSA COUNTY TREASURER









Pending.

Docket

| Date | Code | Count | Party | Serial # | Entry Date | | |
|--|---------|-------|---------------------------------|----------|-------------------------------|------------|-----------|
| 09-13-2010 | TEXT | 1 | | 75776659 | Sep 13 2010 11:36:39:800AM | - | \$ 0.00 |
| CIVIL RELIEF MORE THAN \$10,000 INITIAL FILING. | | | | | | | |
| 09-13-2010 | CONDEMN | - | | 75776661 | Sep 13 2010 11:36:39:860AM | Realized | \$ 0.00 |
| CONDEMNATION | | | | | | | |
| 09-13-2010 | DMFE | - | | 75776662 | Sep 13 2010 11:37:06:180AM | Unrealized | \$ 2.00 |
| DISPUTE MEDIATION FEE(\$ 2.00) | | | | | | | |
| 09-13-2010 | PFE1 | - | | 75776663 | Sep 13 2010 11:48:01:410AM | Unrealized | \$ 150.00 |
| PETITION(\$ 150.00) | | | | | | | |
|  Document Available at Court Clerk's Office | | | | | | | |
| 09-13-2010 | PFE7 | - | | 75776664 | Sep 13 2010 11:37:06:230AM | Unrealized | \$ 6.00 |
| LAW LIBRARY FEE(\$ 6.00) | | | | | | | |
| 09-13-2010 | OCISR | - | | 75776665 | Sep 13 2010 11:37:06:240AM | Unrealized | \$ 25.00 |
| OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00) | | | | | | | |
| 09-13-2010 | CTFREE | - | | 75776877 | Sep 13 2010 11:46:17:430AM | - | \$ 0.00 |
| KUEHN, DANA: APPOINTMENT OF COMMISSIONERS SET FOR HEARING ON 9-29-10 AT 9:15 A.M. | | | | | | | |
| 09-13-2010 | AFD | - | DEPARTMENT OF TRANSPORTATION | 75778375 | Sep 13 2010 1:17:13:840PM | - | \$ 0.00 |
| AFFIDAVIT TO OBTAIN SERVICE BY PUBLICATION | | | | | | | |
|  Document Available at Court Clerk's Office | | | | | | | |
| 09-13-2010 | NO | - | DEPARTMENT OF TRANSPORTATION | 75778456 | Sep 13 2010 1:20:47:860PM | - | \$ 0.00 |
| NOTICE TO DEFENDANTS | | | | | | | |
|  Document Available at Court Clerk's Office | | | | | | | |
| 09-13-2010 | TEXT | - | | 75776660 | Sep 13 2010 11:36:39:820AM | - | \$ 0.00 |
| OCIS HAS AUTOMATICALLY ASSIGNED JUDGE KUEHN, DANA TO THIS CASE. | | | | | | | |
| 09-23-2010 | EAA | - | LAMAR OUTDOOR ADVERTISING | 75893067 | Sep 23 2010 1:59:58:857PM | - | \$ 0.00 |

ENTRY OF APPEARANCE (WILLIAM HICKMAN ENTERS AS COUNSEL - COVERSHEET
ATTACHED) / CERTIFICATE OF SERVICE

 Document Available at Court Clerk's Office

| | | | | | | |
|---|---|---------------------------------|----------|-------------------------------|----------|---------|
| 09-23-2010 AM | - | DEPARTMENT OF TRANSPORTATION | 75893472 | Sep 23 2010 2:15:15:847PM | - | \$ 0.00 |
| AMENDED NOTICE TO DEFENDANTS  Document Available at Court Clerk's Office | | | | | | |
| 09-23-2010 AMP | - | DEPARTMENT OF TRANSPORTATION | 75893511 | Sep 23 2010 2:16:49:717PM | - | \$ 0.00 |
| AMENDED PETITION  Document Available at Court Clerk's Office | | | | | | |
| 09-24-2010 EAA | - | DEPARTMENT OF TRANSPORTATION | 75901456 | Sep 24 2010 10:48:12:130AM | - | \$ 0.00 |
| ENTRY OF APPEARANCE // RICHARD M. FOGG, ENTERS AS COUNSEL  Document Available at Court Clerk's Office | | | | | | |
| 09-29-2010 AFD | - | DEPARTMENT OF TRANSPORTATION | 75949862 | Sep 29 2010 9:08:59:317AM | - | \$ 0.00 |
| AFFIDAVIT OF SERVICE (NOTICE TO DEFENDANTS)  Document Available at Court Clerk's Office | | | | | | |
| 09-29-2010 O | - | | 75951124 | Sep 29 2010 9:41:36:087AM | - | \$ 0.00 |
| ORDER APPOINTING COMMISSIONERS  Document Available at Court Clerk's Office | | | | | | |
| 09-29-2010 TEXT | - | | 75951154 | Sep 29 2010 9:42:33:057AM | - | \$ 0.00 |
| INSTRUCTIONS TO THE COMMISSIONERS  Document Available at Court Clerk's Office | | | | | | |
| 09-29-2010 CTFREE | - | | 75984193 | Oct 1 2010 2:42:25:467PM | - | \$ 0.00 |
| KUEHN, DANA: ROBERT GRANTHAM APPEARS FOR THE PLAINTIFF. APPOINTMENT OF COMMISSIONERS ENTERED. INSTRUCTIONS TO COMMISSIONERS ENTERED. | | | | | | |
| 10-12-2010 OATH | - | | 76174279 | Oct 12 2010 4:29:57:423PM | - | \$ 0.00 |
| OATH OF OFFICE OF COMMISSIONERS  Document Available at Court Clerk's Office | | | | | | |
| 10-12-2010 OATH | - | | 76174287 | Oct 12 2010 4:30:19:173PM | - | \$ 0.00 |
| OATH OF OFFICE OF COMMISSIONERS (JAN GORDON)  Document Available at Court Clerk's Office | | | | | | |
| 10-14-2010 COPY | - | | 76194414 | Oct 14 2010 10:28:05:953AM | Realized | \$ 2.50 |
| COPIES CHARGED TO RAINEY LAW FIRM(\$ 2.50) | | | | | | |
| 10-14-2010 ACCOUNT | - | | 76194419 | Oct 14 2010 10:28:20:803AM | - | \$ 0.00 |

RECEIPT # 2010-1994856 ON 10/14/2010.

PAYOR:RAINEY LAW FIRM TOTAL AMOUNT PAID: \$2.50.
LINE ITEMS:
CJ-2010-5735: \$2.50 ON AC01 CLERK FEES.

Report Generated by The Oklahoma Court Information System at October 14, 2010 12:15 PM

End of Transmission.

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

SEP 18 2010

STATE OF OKLAHOMA, ex rel.,
DEPARTMENT OF TRANSPORTATION,

Plaintiff,

v.

BNSF RAILWAY COMPANY a/k/a
NORTHERN SANTA FE RAILWAY
COMPANY; LAMAR OUTDOOR
ADVERTISING a/k/a LAMAR
ADVERTISING OF OKLAHOMA, INC.; and
the TULSA COUNTY TREASURER,

Defendants.

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No.:

CJ-2010-05735

DANA LYNN KUEHN

PETITION

COMES NOW the Plaintiff, State of Oklahoma, ex rel. Department of
Transportation (the "Plaintiff"), and for its cause of action against the defendants alleges
and states as follows:

1. This action is instituted in the name of the State of Oklahoma, ex rel.
Department of Transportation, as authorized by and in accordance with 69 Okla. Stat.
2001 §1203.

2. For the purpose of establishing, constructing and maintaining the State
Transportation System in Tulsa County, Oklahoma, it is necessary for the Plaintiff to
acquire an interest in the property hereinafter described on Exhibit "A", attached hereto
and made a part hereof, excluding mineral interests and including the right to use and
remove any and all roadbuilding materials. The acquisition shall be in fee simple,
unless specified otherwise in Exhibit "A" in which case the quality of title or interest to be
acquired shall be as stated therein. The property is to be acquired for the construction

and/or maintenance of said State Transportation System or facilities necessary and incidental thereto.

3. Said property is situated in Tulsa County, Oklahoma. The above named defendants own and claim some interest in said property, the same being a ground lease.

4. Plaintiff further states and represents that it has made reasonable effort to secure by purchase, from the said defendants, the property hereinafter described in Exhibit "A", except in instances where there are nonresident owners, unknown heirs, imperfect titles and owners whose whereabouts cannot be ascertained with reasonable diligence. Plaintiff further asserts that the parties herein have failed to reach an agreement regarding Plaintiff's acquisition of said property.

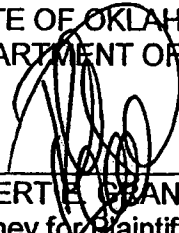
5. An affidavit of need and necessity to acquire said property is attached, marked Exhibit "B", and made a part of this Petition.

WHEREFORE, premises considered, Plaintiff prays that the Court appoint three disinterested freeholders of said County as Commissioners. They should be selected by the Judge of the District Court, as prescribed by law, and should not be interested in any like question. The Commissioners should be instructed to inspect said property described in Exhibit "A" and to consider and determine the just compensation to which the said defendants as owners thereof, or those who profess an interest therein, are entitled by reason of the taking of said property. The Report of Commissioners should be filed with the Court Clerk. Notice as prescribed by statute should be served by the Court Clerk upon all parties. Upon deposit with the Court Clerk of the amount stated in the Report of Commissioners, Plaintiff is authorized to enter upon and take said

property for its use as described. The final determination of all rights and issues of the parties should be made in the manner as prescribed by law.

Respectfully submitted,

STATE OF OKLAHOMA, ex rel.
DEPARTMENT OF TRANSPORTATION

By: 
ROBERT E. BRANTHAM, OBA #3536
Attorney for Plaintiff
200 N.E. 21st Street
Oklahoma City, OK 73105
(405) 521-2681

26604(06)
Parcel 1
8-25-10

Parcel 01

A strip, piece or parcel of land lying in part of the SW¼ of Section 11, Township 19 North, Range 12 East, IM, Tulsa County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the NW corner of said SW¼, thence N 89°20'51" E along the North line of said SW¼ a distance of 1162.07 feet to the point of beginning, thence continuing N 89°20'51" E on said North line a distance of 56.50 feet to a point on the common right of way line between Interstate-244 and the BNSF Railroad, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 13°32'56" W and a radius of 1097.74 feet an arc distance of 67.65 feet, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 19°52'08" W and a radius of 2764.93 feet an arc distance of 246.54 feet, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 13°52'17" W and a radius of 2764.93 feet an arc distance of 332.85 feet, thence S 08°50'42" W on said common right of way line a distance of 463.60 feet, thence S 61°55'58" W on said common right of way line a distance of 19.72 feet, thence S 08°50'42" W on said common right of way line a distance of 10.89 feet, thence S 89°00'13" W a distance of 8.06 feet, thence N 07°32'46" E a distance of 635.11 feet, thence N 13°54'46" E a distance of 320.09 feet, thence Northeasterly on a curve to the right having a chord bearing of N 21°06'13" E and a radius of 2580.00 feet an arc distance of 169.18 feet to the point of beginning.

Containing 1.07 acres (46602 s.f.) more or less, of new right of way.

All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

Exhibit A

26604(06)
Parcel 2
8-25-10

Parcel 02

A strip, piece or parcel of land lying in part of the NW¼ of Section 11, Township 19 North, Range 12 East, IM, Tulsa County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the SW corner of said NW¼, thence N 89°20'51" E along the South line of said NW¼ a distance of 1162.07 feet to the point of beginning, thence continuing N 89°20'51" E on said South line a distance of 56.50 feet to a point on the common right of way line between Interstate-244 and the BNSF Railroad, thence Northeasterly on said common right of way line along a curve to the right having a chord bearing of N 21°55'49" E and a radius of 1097.74 feet an arc distance of 253.51 feet, thence N 28°32'46" E on said common right of way line a distance of 147.49 feet to a point on the South Meander Line of the Arkansas River, thence N 57°00'00" W along said meander line a distance of 41.19 feet, thence S 26°21'04" W a distance of 292.18 feet, thence Southwesterly on a curve to the left having a chord bearing of S 24°30'49" W and a radius of 2580.00 feet an arc distance of 137.91 feet to the point of beginning.

Containing 0.38 acres (16370 s.f.) more or less, of new right of way.

-----All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

Exhibit A

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

)
) ss.: "EXHIBIT B"
)

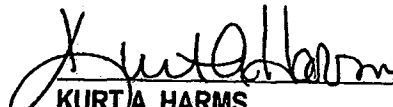
Parcel No. 1 & 2
Job Piece No. 26604(06)
County Tulsa

KURT A. HARMS, of lawful age, being first duly sworn, deposes and says as follows: That I am employed as Chief of the Right-of-Way and Utilities Division by the Oklahoma Department of Transportation, and as such, am in charge of the securing of all necessary realty required in the construction and maintenance of the State Transportation System designated by the Oklahoma Department of Transportation.

That at this time it is necessary to acquire the aforementioned interest(s) in the tract(s) of land as hereinbefore described, in order to economically construct and maintain a section of the State Transportation System, and facilities incidental thereto.

That the Transportation Commission has determined that a public necessity exists for such acquisition of the property legally described in the sheet attached hereto; that representatives of the Department of Transportation have been unable to effect a reasonable and amicable settlement with the property owner.

In instances where there are nonresident owners, unknown heirs, imperfect titles and owners whose whereabouts cannot be ascertained, the Department of Transportation has made a reasonable and diligent effort to locate and secure these owners.

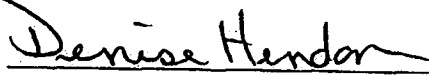

KURT A. HARMS

SUBSCRIBED AND SWORN TO before me by the above named on this 9th day of September, 2010.

My Commission Expires:

My Commission No.:




Notary Public

FORM 123 A

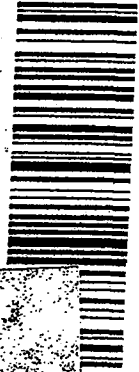
STATE OF
DEPART

TRANSPORTATION

200 N. E. 21st STREET
OKLAHOMA CITY, OKLAHOMA 73105-3204

ROOM NO. 3D-1

CERTIFIED MAILTM



7007 1490 0004 9742 4301



02 1M
000 421 9530 SEP 14 2010
\$ 10.82⁰⁰
FITNEY BOWES
MAILED FROM ZIP CODE 73105

RETURN RECEIPT REQUESTED

The Corporation Company
Reg. Agent - BNSF Railway Co.
1833 S. Morgan Road
Oklahoma City, OK 73128
RG/Tulsa/JP26604(08)/PRCL1,2

RESTRICTED DELIVERY

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

SEP 18 2010

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA, TULSA COUNTY

STATE OF OKLAHOMA, ex rel.,
DEPARTMENT OF TRANSPORTATION,

Plaintiff,

v.

BNSF RAILWAY COMPANY a/k/a
NORTHERN SANTA FE RAILWAY
COMPANY; LAMAR OUTDOOR
ADVERTISING a/k/a LAMAR
ADVERTISING OF OKLAHOMA, INC.; and
the TULSA COUNTY TREASURER,

Defendants.

Case No:

CJ-2010-05735

DANA LYNN KUEHN

NOTICE TO DEFENDANTS

THE STATE OF OKLAHOMA,

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby notified that the Department of Transportation of the State of Oklahoma, acting under and by virtue of the laws of the State of Oklahoma, has filed legal proceedings in the above-named Court. In those proceedings, the State of Oklahoma, ex rel. Department of Transportation, is the Plaintiff. You are the defendants.

The Department of Transportation, acting under the laws of the State of Oklahoma, has determined to locate, maintain and/or upgrade a public State Highway, and/or facilities incidental thereto, on the property described in Exhibit "A" attached hereto.

Because the Plaintiff has been unable to acquire that property from you by private purchase, all previous negotiations and/or agreements made by the Department

DCT/RS

of Transportation prior to this date are considered void. A hearing will be held on the 29th day of September, 2010, at the hour of 9:15 o'clock A.m. ✓

(or as soon thereafter as this matter may be heard) before Judge KUEHN of the District Court of Tulsa County, Oklahoma, in the Courthouse at Tulsa, Oklahoma.

At this hearing, the Court will issue an Order appointing three disinterested freeholders of that County to act as Commissioners. The Commissioners shall be ordered to inspect the property described in Exhibit "A" and to determine the just compensation to which the defendants are entitled by reason of its appropriation. Said appropriation is to be in fee simple, unless specified otherwise in Exhibit "A" in which case the quality of title or interest to be acquired shall be as so stated, excluding mineral interests. The appropriation also includes the right to use and remove any and all road-

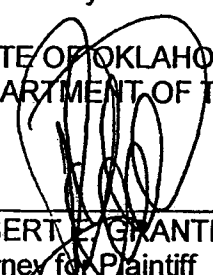
building materials from the fee, as well as from any easement described, for the aforementioned public State Transportation System purposes.

The Commissioners shall further be ordered to return their Report to the Court Clerk. The Court Clerk will within ten (10) days forward Notice of filing with a copy of the Report to all parties. Within thirty (30) days after the filing of the Report of Commissioners, any party to this proceeding may file a written exception. Within sixty (60) days from the filing of said Report of Commissioners, any party to this proceeding may also file a written demand for a trial by jury of the issues involved. If neither party files exception to the Report of Commissioners nor demands a trial by jury within the time limitations set out above, the Report of Commissioners shall be approved and confirmed by the Court and the determination of just compensation shall be final and the case shall be closed.

You may be present at the time set forth above for the appointment of the Commissioners, if you so desire. Should you have questions regarding these proceedings, you should seek the advice of legal counsel.

Respectfully submitted,

STATE OF OKLAHOMA, ex rel.
DEPARTMENT OF TRANSPORTATION

By: 
ROBERT E. GRANTHAM, OBA #3536
Attorney for Plaintiff
200 N.E. 21st Street
Oklahoma City, OK 73105
(405) 521-2681

26604(06)
Parcel 1
8-25-10

Parcel 01

A strip, piece or parcel of land lying in part of the SW¼ of Section 11, Township 19 North, Range 12 East, IM, Tulsa County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the NW corner of said SW¼, thence N 89°20'51" E along the North line of said SW¼ a distance of 1162.07 feet to the point of beginning, thence continuing N 89°20'51" E on said North line a distance of 56.50 feet to a point on the common right of way line between Interstate-244 and the BNSF Railroad, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 13°32'56" W and a radius of 1097.74 feet an arc distance of 67.65 feet, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 19°52'08" W and a radius of 2764.93 feet an arc distance of 246.54 feet, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 13°52'17" W and a radius of 2764.93 feet an arc distance of 332.85 feet, thence S 08°50'42" W on said common right of way line a distance of 463.60 feet, thence S 61°55'58" W on said common right of way line a distance of 19.72 feet, thence S 08°50'42" W on said common right of way line a distance of 10.89 feet, thence S 89°00'13" W a distance of 8.06 feet, thence N 07°32'46" E a distance of 635.11 feet, thence N 13°54'46" E a distance of 320.09 feet, thence Northeasterly on a curve to the right having a chord bearing of N 21°06'13" E and a radius of 2580.00 feet an arc distance of 169.18 feet to the point of beginning.

Containing 1.07 acres (46602 s.f.) more or less, of new right of way.

All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

Exhibit A

26604(06)
Parcel 2
8-25-10

Parcel 02

A strip, piece or parcel of land lying in part of the NW¼ of Section 11, Township 19 North, Range 12 East, IM, Tulsa County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the SW corner of said NW¼, thence N 89°20'51" E along the South line of said NW¼ a distance of 1162.07 feet to the point of beginning, thence continuing N 89°20'51" E on said South line a distance of 56.50 feet to a point on the common right of way line between Interstate-244 and the BNSF Railroad, thence Northeasterly on said common right of way line along a curve to the right having a chord bearing of N 21°55'49" E and a radius of 1097.74 feet an arc distance of 253.51 feet, thence N 28°32'46" E on said common right of way line a distance of 147.49 feet to a point on the South Meander Line of the Arkansas River, thence N 57°00'00" W along said meander line a distance of 41.19 feet, thence S 26°21'04" W a distance of 292.18 feet, thence Southwesterly on a curve to the left having a chord bearing of S 24°30'49" W and a radius of 2580.00 feet an arc distance of 137.91 feet to the point of beginning.

Containing 0.38 acres (16370 s.f.) more or less, of new right of way.

All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

Exhibit A

SEP 23 2010 2:14PM Richard M. Fogg

(FAX)2931536

No. 7591

P. 4 2/006

09/23/2010 THU 13:41 FAX

SEP 27 2010 0002/011

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,
DEPARTMENT OF TRANSPORTATION,

Plaintiff,

v.

BNSF RAILWAY COMPANY a/k/a
NORTHERN SANTA FE RAILWAY
COMPANY; LAMAR OUTDOOR
ADVERTISING a/k/a LAMAR
ADVERTISING OF OKLAHOMA, INC.; and
the TULSA COUNTY TREASURER,

Defendants.

DISTRICT COURT
FILED

SEP 23 2010

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No.: CJ-2010-5736
Judge Kuehn

AMENDED PETITION

COMES NOW the Plaintiff, State of Oklahoma, ex rel. Department of Transportation (the "Plaintiff"), and Amends its cause of action against the defendants and alleges and states as follows:

1. This action is instituted in the name of the State of Oklahoma, ex rel. Department of Transportation, as authorized by and in accordance with 69 Okla. Stat. 2001 §1203.

2. For the purpose of establishing, constructing and maintaining the State Transportation System in Tulsa County, Oklahoma, it is necessary for the Plaintiff to acquire an interest in the property hereinafter described on Exhibit "A", attached hereto and made a part hereof, excluding mineral interests and including the right to use and remove any and all roadbuilding materials. The acquisition shall be in fee simple, unless specified otherwise in Exhibit "A" in which case the quality of title or interest to be acquired shall be as stated therein. The property is to be acquired for the construction

and/or maintenance of said State Transportation System or facilities necessary and incidental thereto.

3. Said property is situated in Tulsa County, Oklahoma. The above named defendants own and claim some interest in said property, the same being a ground lease.

4. Plaintiff further states and represents that it has made reasonable effort to secure by purchase, from the said defendants, the property hereinafter described in Exhibit "A", except in instances where there are nonresident owners, unknown heirs, imperfect titles and owners whose whereabouts cannot be ascertained with reasonable diligence. Plaintiff further asserts that the parties herein have failed to reach an agreement regarding Plaintiff's acquisition of said property.

5. An affidavit of need and necessity to acquire said property is attached, marked Exhibit "B", and made a part of this Petition.

6. The legal description contained in the original Petition filed herein on the 13th day of September, 2010, is amended to exclude certain lands underlying the tracks of the Defendant, BNSF RAILWAY COMPANY a/k/a NORTHERN SANTA FE RAILWAY COMPANY, with said exclusion being an area of twenty-five feet (25') left and right of the centerline of said spur track, the same being further identified on the Amended Exhibit A attached hereto and by this reference incorporated herein.

WHEREFORE, premises considered, Plaintiff prays that the Court appoint three disinterested freeholders of said County as Commissioners. They should be selected by the Judge of the District Court, as prescribed by law, and should not be interested in any like question. The Commissioners should be instructed to inspect said property

described in Exhibit "A" and to consider and determine the just compensation to which the said defendants as owners thereof, or those who profess an interest therein, are entitled by reason of the taking of said property. The Report of Commissioners should be filed with the Court Clerk. Notice as prescribed by statute should be served by the Court Clerk upon all parties. Upon deposit with the Court Clerk of the amount stated in the Report of Commissioners, Plaintiff is authorized to enter upon and take said property for its use as described. The final determination of all rights and issues of the parties should be made in the manner as prescribed by law.

Respectfully submitted,

STATE OF OKLAHOMA, ex rel.
DEPARTMENT OF TRANSPORTATION

By: 
ROBERT E. GRANTHAM, OBA #3536
Attorney for Plaintiff
200 N.E. 21st Street
Oklahoma City, OK 73105
(405) 521-2681

JP 26604(06)
Parcel 01
September 23, 2010

Parcel 1

KL
9-23-10

A strip, piece or parcel of land lying in part of the SW¼ of Section 11, Township 19 North, Range 12 East, IM, Tulsa County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the NW corner of said SW¼, thence N 89°20'51" E along the North line of said SW¼ a distance of 1162.07 feet to the point of beginning, thence continuing N 89°20'51" E on said North line a distance of 56.50 feet to a point on the common right of way line between Interstate-244 and the BNSF Railroad, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 13°32'56" W and a radius of 1097.74 feet an arc distance of 67.65 feet, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 19°52'08" W and a radius of 2764.93 feet an arc distance of 246.54 feet, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 13°52'17" W and a radius of 2764.93 feet an arc distance of 332.85 feet, thence S 08°50'42" W on said common right of way line a distance of 463.60 feet, thence S 61°55'58" W on said common right of way line a distance of 19.72 feet, thence S 08°50'42" W on said common right of way line a distance of 10.89 feet, thence S 89°00'13" W a distance of 8.06 feet, thence N 07°32'46" E a distance of 635.11 feet, thence N 13°54'46" E a distance of 320.09 feet, thence Northeasterly on a curve to the right having a chord bearing of N 21°06'13" E and a radius of 2580.00 feet an arc distance of 169.18 feet to the point of beginning.

LESS AND EXCEPT a strip of land lying 25 feet left and 25 feet right of the centerline of the BNSF Railroad spur track that crosses the above described parcel.

Containing 0.95 acres (41,343 s.f.) more or less, of new right of way.

All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

26604(06)
Parcel 2
8-25-10

LL
9-23-10

Parcel 02

A strip, piece or parcel of land lying in part of the NW¼ of Section 11, Township 19 North, Range 12 East, IM, Tulsa County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the SW corner of said NW¼, thence N 89°20'51" E along the South line of said NW¼ a distance of 1162.07 feet to the point of beginning, thence continuing N 89°20'51" E on said South line a distance of 56.50 feet to a point on the common right of way line between Interstate-244 and the BNSF Railroad, thence Northeasterly on said common right of way line along a curve to the right having a chord bearing of N 21°55'49" E and a radius of 1097.74 feet an arc distance of 253.51 feet, thence N 28°32'46" E on said common right of way line a distance of 147.49 feet to a point on the South Meander Line of the Arkansas River, thence N 57°00'00" W along said meander line a distance of 41.19 feet, thence S 26°21'04" W a distance of 292.18 feet, thence Southwesterly on a curve to the left having a chord bearing of S 24°30'49" W and a radius of 2580.00 feet an arc distance of 137.91 feet to the point of beginning.

Containing 0.38 acres (16370 s.f.) more or less, of new right of way.

All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

Sep. 23. 2010 2:14PM
SEP-23-2010(THU) 13:55 Richard M. Fogg

(FAX)2951536

No. 7591

P. 32/006

09/23/2010 THU 13:42 FAX

0007/011

DISTRICT COURT
FILED

SEP 23 2010

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,
DEPARTMENT OF TRANSPORTATION,

Plaintiff,

v.

BNSF RAILWAY COMPANY a/k/a
NORTHERN SANTA FE RAILWAY
COMPANY; LAMAR OUTDOOR
ADVERTISING a/k/a LAMAR
ADVERTISING OF OKLAHOMA, INC.; and
the TULSA COUNTY TREASURER,

Defendants.

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No.: *CJ-2010-5735*

AMENDED NOTICE TO DEFENDANTS

THE STATE OF OKLAHOMA,

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby notified that the Department of Transportation of the State of Oklahoma, acting under and by virtue of the laws of the State of Oklahoma, has filed legal proceedings in the above-named Court. In those proceedings, the State of Oklahoma, ex rel. Department of Transportation, is the Plaintiff. You are the defendants.

The Department of Transportation, acting under the laws of the State of Oklahoma, has determined to locate, maintain and/or upgrade a public State Highway, and/or facilities incidental thereto, on the property described in Exhibit "A" attached hereto.

Because the Plaintiff has been unable to acquire that property from you by private purchase, all previous negotiations and/or agreements made by the Department

of Transportation prior to this date are considered void. A hearing will be held on the 29th day of September, 2010, at the hour of 9:15 o'clock a.m. (or as soon thereafter as this matter may be heard) before Judge Kuehn of the District Court of Tulsa County, Oklahoma, in the Courthouse at Tulsa, Oklahoma.

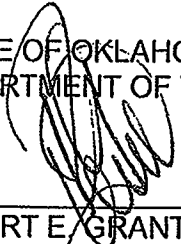
At this hearing, the Court will issue an Order appointing three disinterested freeholders of that County to act as Commissioners. The Commissioners shall be ordered to inspect the property described in Exhibit "A" and to determine the just compensation to which the defendants are entitled by reason of its appropriation. Said appropriation is to be in fee simple, unless specified otherwise in Exhibit "A" in which case the quality of title or interest to be acquired shall be as so stated, excluding mineral interests. The appropriation also includes the right to use and remove any and all road-building materials from the fee, as well as from any easement described, for the aforementioned public State Transportation System purposes.

The Commissioners shall further be ordered to return their Report to the Court Clerk. The Court Clerk will within ten (10) days forward Notice of filing with a copy of the Report to all parties. Within thirty (30) days after the filing of the Report of Commissioners, any party to this proceeding may file a written exception. Within sixty (60) days from the filing of said Report of Commissioners, any party to this proceeding may also file a written demand for a trial by jury of the issues involved. If neither party files exception to the Report of Commissioners nor demands a trial by jury within the time limitations set out above, the Report of Commissioners shall be approved and confirmed by the Court and the determination of just compensation shall be final and the case shall be closed.

You may be present at the time set forth above for the appointment of the Commissioners, if you so desire. Should you have questions regarding these proceedings, you should seek the advice of legal counsel.

Respectfully submitted,

STATE OF OKLAHOMA, ex rel.
DEPARTMENT OF TRANSPORTATION

By: 
ROBERT E. GRANTHAM, OBA #3536
Attorney for Plaintiff
200 N.E. 21st Street
Oklahoma City, OK 73105
(405) 521-2681

JP 26604(06)
Parcel 01
September 23, 2010

Parcel 1

KL
9 23-10

A strip, piece or parcel of land lying in part of the SW $\frac{1}{4}$ of Section 11, Township 19 North, Range 12 East, IM, Tulsa County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the NW corner of said SW $\frac{1}{4}$, thence N 89°20'51" E along the North line of said SW $\frac{1}{4}$ a distance of 1162.07 feet to the point of beginning, thence continuing N 89°20'51" E on said North line a distance of 56.50 feet to a point on the common right of way line between Interstate-244 and the BNSF Railroad, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 13°32'56" W and a radius of 1097.74 feet an arc distance of 67.65 feet, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 19°52'08" W and a radius of 2764.93 feet an arc distance of 246.54 feet, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 13°52'17" W and a radius of 2764.93 feet an arc distance of 332.85 feet, thence S 08°50'42" W on said common right of way line a distance of 463.60 feet, thence S 61°55'58" W on said common right of way line a distance of 19.72 feet, thence S 08°50'42" W on said common right of way line a distance of 10.89 feet, thence S 89°00'13" W a distance of 8.06 feet, thence N 07°32'46" E a distance of 635.11 feet, thence N 13°54'46" E a distance of 320.09 feet, thence Northeasterly on a curve to the right having a chord bearing of N 21°06'13" E and a radius of 2580.00 feet an arc distance of 169.18 feet to the point of beginning.

LESS AND EXCEPT a strip of land lying 25 feet left and 25 feet right of the centerline of the BNSF Railroad spur track that crosses the above described parcel.

Containing 0.95 acres (41,343 s.f.) more or less, of new right of way.

All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

26604(06)
Parcel 2
8-25-10

LL
9-23-10

Parcel 02

A strip, piece or parcel of land lying in part of the NW¼ of Section 11, Township 19 North, Range 12 East, IM, Tulsa County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the SW corner of said NW¼, thence N 89°20'51" E along the South line of said NW¼ a distance of 1162.07 feet to the point of beginning, thence continuing N 89°20'51" E on said South line a distance of 56.50 feet to a point on the common right of way line between Interstate-244 and the BNSF Railroad, thence Northeasterly on said common right of way line along a curve to the right having a chord bearing of N 21°55'49" E and a radius of 1097.74 feet an arc distance of 253.51 feet, thence N 28°32'46" E on said common right of way line a distance of 147.49 feet to a point on the South Meander Line of the Arkansas River, thence N 57°00'00" W along said meander line a distance of 41.19 feet, thence S 26°21'04" W a distance of 292.18 feet, thence Southwesterly on a curve to the left having a chord bearing of S 24°30'49" W and a radius of 2580.00 feet an arc distance of 137.91 feet to the point of beginning.

Containing 0.38 acres (16370 s.f.) more or less, of new right of way.

All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

Sep. 24. 2010 10:47AM

SEP-24-2010(FRI) 10:09 Richard M. Fogg

(FRX)2951536

No. 7614

P. 2

P. 002/003

In the District Court of Tulsa County State of Oklahoma

The State of Oklahoma, ex rel, The
Department of Transportation,

Plaintiff,

v.

BNSF Railway Company a/k/a
Northern Santa Fe Railway
Company; Lamar Outdoor
Advertising a/k/a Lamar
Advertising of Oklahoma, Inc.; and
the Tulsa County Treasurer,

Defendants.

Case No. CJ-2010-5735
Judge Kuehn

DISTRICT COURT
FILED

SEP 24 2010

BALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

ENTRY OF APPEARANCE

COMES NOW Richard M. Fogg, of FOGG LAW FIRM, and hereby enters his
appearance as additional counsel of record for Plaintiff, The State of Oklahoma, ex rel,
The Department of Transportation.

FOGG LAW FIRM

421 S. Rock Island Ave.

El Reno, OK 73036

Telephone: 405-262-3502

Facsimile: 405-295-1536

richard@fogglawfirm.com

By.


Richard M. Fogg, OBA #2998

Attorney for Plaintiff

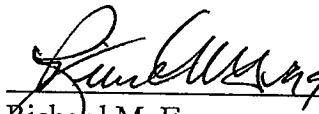
Certificate of Mailing

The undersigned hereby certifies that on the 24 day of September, 2010, he placed in the within and foregoing Entry of Appearance in the United States Mails, properly addressed and with the correct postage thereon to the following:

William P. Tunnell, Jr.
105 N. Hudson, Suite 650
Oklahoma City, OK 73102

William Hickman
Hickman & Fitzpatrick
119 N. Robinson Avenue, Suite 300
Oklahoma City, OK 73102

J. Dennis Semler, Tulsa County Treasurer
County Administration Building
500 S. Denver Avenue, Third Floor
Tulsa, OK 74103



Richard M. Fogg

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,
DEPARTMENT OF TRANSPORTATION,

Plaintiff,

v.

BNSF RAILWAY COMPANY a/k/a
NORTHERN SANTA FE RAILWAY
COMPANY; LAMAR OUTDOOR
ADVERTISING a/k/a LAMAR
ADVERTISING OF OKLAHOMA, INC.; and
the TULSA COUNTY TREASURER,

Defendants.

DISTRICT COURT
FILED

SEP 29 2010

BALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No.: CJ-2010-5735
Judge Kuehn

ORDER APPOINTING COMMISSIONERS

NOW ON THIS 29th day of September, 2010, the Petition of the Plaintiff requesting the appointment of Commissioners comes before the Court. Plaintiff appears through its counsel. The Court finds that the Plaintiff has complied with the statutory requirements of notice to all interested parties.

The Court hereby appoints Jay Goobao

Stella Beventon

and

GEORGE O'CONNOR

, three

disinterested freeholders of Tulsa County, Oklahoma, as Commissioners. They are to inspect said property described in Exhibit "A" and to consider and determine the just compensation to which the defendants are entitled by appropriation of their property, according to the Petition filed herein. Said Commissioners are hereby authorized, empowered and directed to: 1) take the oath prescribed by law; 2) forthwith inspect and appraise said property to determine just compensation pursuant to written instructions by

the Court; 3) make their Report, as provided by law; 4) file said Report with the Court Clerk within 30 days of the date of this Order; and 5) file with the Court Clerk their Bill of Commissioners for fees, which fees will be determined by the Court and approved by subsequent Order.

IT IS SO ORDERED.

DANA LYNN KUEHN

JUDGE OF THE DISTRICT COURT

JP 26604(06)
Parcel 01
September 23, 2010

Parcel 1

KL
9-23-10

A strip, piece or parcel of land lying in part of the SW $\frac{1}{4}$ of Section 11, Township 19 North, Range 12 East, IM, Tulsa County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the NW corner of said SW $\frac{1}{4}$, thence N 89°20'51" E along the North line of said SW $\frac{1}{4}$ a distance of 1162.07 feet to the point of beginning, thence continuing N 89°20'51" E on said North line a distance of 56.50 feet to a point on the common right of way line between Interstate-244 and the BNSF Railroad, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 13°32'56" W and a radius of 1097.74 feet an arc distance of 67.65 feet, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 19°52'08" W and a radius of 2764.93 feet an arc distance of 246.54 feet, thence Southwesterly on said common right of way line on a curve to the left having a chord bearing of S 13°52'17" W and a radius of 2764.93 feet an arc distance of 332.85 feet, thence S 08°50'42" W on said common right of way line a distance of 463.60 feet, thence S 61°55'58" W on said common right of way line a distance of 19.72 feet, thence S 08°50'42" W on said common right of way line a distance of 10.89 feet, thence S 89°00'13" W a distance of 8.06 feet, thence N 07°32'46" E a distance of 635.11 feet, thence N 13°54'46" E a distance of 320.09 feet, thence Northeasterly on a curve to the right having a chord bearing of N 21°06'13" E and a radius of 2580.00 feet an arc distance of 169.18 feet to the point of beginning.

LESS AND EXCEPT a strip of land lying 25 feet left and 25 feet right of the centerline of the BNSF Railroad spur track that crosses the above described parcel.

Containing 0.95 acres (41,343 s.f.) more or less, of new right of way.

All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

26604(06)
Parcel 2
8-25-10

LL
9-23-10

Parcel 02

A strip, piece or parcel of land lying in part of the NW¼ of Section 11, Township 19 North, Range 12 East, 1M, Tulsa County, Oklahoma. Said parcel of land being described by metes and bounds as follows:

Commencing at the SW corner of said NW¼, thence N 89°20'51" E along the South line of said NW¼ a distance of 1162.07 feet to the point of beginning, thence continuing N 89°20'51" E on said South line a distance of 56.50 feet to a point on the common right of way line between Interstate-244 and the BNSF Railroad, thence Northeasterly on said common right of way line along a curve to the right having a chord bearing of N 21°55'49" E and a radius of 1097.74 feet an arc distance of 253.51 feet, thence N 28°32'46" E on said common right of way line a distance of 147.49 feet to a point on the South Meander Line of the Arkansas River, thence N 57°00'00" W along said meander line a distance of 41.19 feet, thence S 26°21'04" W a distance of 292.18 feet, thence Southwesterly on a curve to the left having a chord bearing of S 24°30'49" W and a radius of 2580.00 feet an arc distance of 137.91 feet to the point of beginning.

Containing 0.38 acres (16370 s.f.) more or less, of new right of way.

All bearings contained in this description are based on the Oklahoma State Plane Coordinate System and are not astronomical bearings.

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMADISTRICT COURT
FILED

SEP 29 2010

STATE OF OKLAHOMA, ex rel.,
DEPARTMENT OF TRANSPORTATION,

Plaintiff,

v.

BNSF RAILWAY COMPANY a/k/a
NORTHERN SANTA FE RAILWAY
COMPANY; LAMAR OUTDOOR
ADVERTISING a/k/a LAMAR
ADVERTISING OF OKLAHOMA, INC.; and
the TULSA COUNTY TREASURER,

Defendants.

Case No.: CJ-2010-5735
Judge KuehnSALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY**INSTRUCTIONS TO THE COMMISSIONERS**

You are advised that the Plaintiff has a legal right to take the property involved, provided it pays just compensation to the Defendant in accordance with Article II, §24 of the Oklahoma Constitution and Oklahoma Law (State of Oklahoma, ex rel., Department of Transportation v. Little, 2004 OK 74).

You should determine the amount of money that constitutes just compensation using the appropriate appraisal methods in accordance with the above authority. You are instructed that just compensation is defined by the Oklahoma Constitution as the value of the property taken, and in addition, any injury to any part of the property not taken. Any special and direct benefits to the part of the property not taken may be offset only against any injury to the property not taken. Just compensation shall include all compensation for relocation, refitting and reestablishment expenses, if any, as permitted by law.

Both a representative of the Plaintiff and Defendant, or their agents, should be given an opportunity to be present at any meeting and shall make a full and complete disclosure of all damages that will and could arise because of the condemnation (State of Oklahoma, ex rel., Department of Transportation v. Watkins, 1999 OK CIV APP 122, 993 P.2d 144). A party may elect to advise you in writing of all the damages they will or could be claiming because of the condemnation. **You shall each maintain notes and records of how you arrived at and the individual items included within the sum of just compensation in the event any party should object to your report and a hearing be held; and you shall provide a copy of your notes to any party so requesting.**

You are hereby directed to file your Report of Commissioners with the Court Clerk within 30 days of this date.

IT IS SO ORDERED!

DAVA LYNN KUEHN

JUDGE OF THE DISTRICT COURT

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMASTATE OF OKLAHOMA, ex rel.,
DEPARTMENT OF TRANSPORTATION,

Plaintiff,

v.

BNSF RAILWAY COMPANY a/k/a
NORTHERN SANTA FE RAILWAY
COMPANY; LAMAR OUTDOOR
ADVERTISING a/k/a LAMAR
ADVERTISING OF OKLAHOMA, INC.; and
the TULSA COUNTY TREASURER,

Defendants.

DISTRICT COURT
FILED

SEP 29 2010

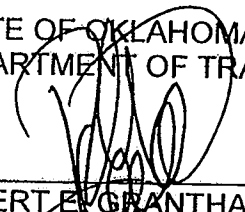
SALLY HOWE SMITH, COURT CLERK
STATE OF OKLAHOMA, TULSA COUNTYCase No.: CJ-2010-5735
Judge KuehnAFFIDAVIT OF SERVICE

I hereby certify that, on the 16th day of September, 2010, pursuant to 69 Okla. Stat. 2001 §1203, I served a true and correct copy of the Petition, together with a true and correct copy of the Notice to Defendants, by certified mail, addressee only, return receipt requested, upon the named defendants (or authorized agents) for which return receipts (or refusals) are attached hereto.

Respectfully submitted,

STATE OF OKLAHOMA, ex rel.
DEPARTMENT OF TRANSPORTATION

By:


ROBERT E. GRANTHAM, OBA #3536
Attorney for Plaintiff
N.E. 21st Street
Oklahoma City, OK 73105
(405) 521-2681

Subscribed and sworn to before me this 22nd day of September, 2010.

Denise Hendon
Notary Public

My Commission Expires:
04-04-2013

(SEAL)



STATE OF OKLA. v. BNSF Railway Company, et al.

Case No. CJ-2010-5735, Tulsa County

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|---|--|--|--|
| <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> | | <p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> | |
| <p>1. Article Addressed to:</p> <p>BNSF Railway Company a/k/a Northern Santa Fe Railway Co. 4515 Kansas Avenue Kansas City, KS 66106</p> <p>RG/Tulsa/JP26604(06)/PRCL1,2</p> | | <p>B. Received by (Printed Name) C. Date of Delivery 8/16</p> | |
| <p>2. Article Number (Transfer from service label)</p> <p>7007 1490 0004 9742 4318</p> | | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p> | | <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p> | |
| | | <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p> | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|---|--|--|--|
| <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> | | <p>A. Signature X Korri Behler <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> | |
| <p>1. Article Addressed to:</p> <p>The Corporation Company Reg. Agent - BNSF Railway Co. 1833 S. Morgan Road Oklahoma City, OK 73128</p> <p>RG/Tulsa/JP26604(06)/PRCL1,2</p> | | <p>B. Received by (Printed Name) C. Date of Delivery 1833 S. Morgan Rd. Oklahoma City, OK 73128</p> | |
| <p>2. Article Number (Transfer from service label)</p> <p>7007 1490 0004 9742 4301</p> | | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p> | | <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p> | |
| | | <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p> | |

STATE OF OKLA. v. BNSF Railway Company, et al.

Case No. CJ-2010-5735, Tulsa County

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|---|--|---|--|
| <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> | | <p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> | |
| <p>1. Article Addressed to:</p> <p>Lamar Outdoor Advertising a/k/a Lamar Advertising of OK, Inc. 7777 E 38th Street Tulsa, OK 74145</p> <p>RG/Tulsa/JP26604(06)/PRCL1,2</p> | | <p>B. Received by (Printed Name) <i>Bethany Quinn</i> C. Date of Delivery <i>9/15</i></p> | |
| <p>2. Article Number (Transfer from service label) 7007 1490 0004 9742 4295</p> | | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>PS Form 3811, February 2004</p> | | <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> | |
| <p>Domestic Return Receipt</p> | | <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p> | |
| <p>102595-02-M-1540</p> | | | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|---|--|---|--|
| <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> | | <p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> | |
| <p>1. Article Addressed to:</p> <p>Capitol Documents Services, Inc. Reg. Agent - Lamar Outdoor Advertising 115 SW 89th Street Oklahoma City, OK 73139</p> <p>RG/Tulsa/JP26604(06)/PRCL1,2</p> | | <p>B. Received by (Printed Name) <i>G. Parrish</i> C. Date of Delivery <i>SEP 15 2010</i></p> | |
| <p>2. Article Number (Transfer from service label) 7007 1490 0004 9742 4288</p> | | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>PS Form 3811, February 2004</p> | | <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> | |
| <p>Domestic Return Receipt</p> | | <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p> | |
| <p>102595-02-M-1540</p> | | | |

2004 LS1098705

PROOF OF SERVICE AFFIDAVIT

SEP 29, 2010

ORIGIN: TULSA COUNTY

CASE NUMBER: CJ 10 5735

Plaintiff/In Re: STATE OF OKLAHOMA, EX REL.

Defendant(s): BNSF RAILWAY COMPANY, ET AL

I, Patricia Blakley, being duly sworn, certify that I received the foregoing, to wit:

Notice / Petition

For service upon: LAMAR OUTDOOR ADVERTISING

And that on Sep 14, 2010 at 2:03 pm, I served the same on the above named by delivering copies of the same to: NOLEEN WILSON, who identified himself / herself as a/the Service Agent at an address of 115 SW 89TH ST, OKLAHOMA CITY OK 73139 which is identified as a

I completed the above service in the following manner:

- ☐ **PERSONAL SERVICE:** By delivering said process to the above named person(s).
- ☐ **RESIDENTIAL SERVICE:** By leaving a copy of said process for the above named, at their usual place of abode or dwelling, with an individual who identified himself / herself as a resident / family member fifteen years of age or older.
- ☐ **PERSONAL / RESIDENTIAL SERVICE:** By personally delivering a copy of said process to the above indicated person and, additionally, by leaving a copy for _____ with said individual who identified himself / herself as a resident / family member fifteen years of age or older.
- ☒ **CORPORATION / PARTNERSHIP / UNINCORPORATED ASSOCIATION, ETC. :** By delivering a copy of said process for the above named entity, with the person indicated, as required by law.
- ☐ **POSTED SERVICE:** By affixing a copy of said process at the address indicated, which is believed to be in the possession of the above named individual / entity, in a conspicuous manner as required by law.
- ☐ **SERVICE BY MAIL:** By mailing a copy of said process to the above named at the address indicated as required by law in the following manner:
- ☐ First Class Mail ☐ Certified Mail ☐ Restricted Delivery ☐ Return Receipt Requested
- ☐ **OTHER INFORMATION:**

Subscribed and sworn to before me this 16 day
of April 2010 in Oklahoma County.

Notary Public

(SEAL)

Undersigned declares under penalty of perjury that the foregoing is true and correct.

Signature of Server

PSS 09 95
PS #

Jerry M. Freeland's
LEGAL SUPPORT SERVICES OF OKLAHOMA, INC.
 217 N. Harvey, Suite 405 ♦ Oklahoma City, Oklahoma 73102 ♦ (405) 232-1025
**** 33 Years of Service ****

2004 LS1098704

PROOF OF SERVICE AFFIDAVIT

SEP 29, 2010

ORIGIN: TULSA COUNTY

CASE NUMBER: CJ 10 5735

Plaintiff/In Re: STATE OF OKLAHOMA, EX REL.

Defendant(s): BNSF RAILWAY COMPANY, ET AL

I, Patricia Blakley, being duly sworn, certify that I received the foregoing, to wit:

Notice / Petition

For service upon: *BNSF RAILWAY COMPANY*

And that on Sep 14, 2010 at 2:35 pm, I served the same on the above named by delivering copies of the same to: KAY CHAPMAN, who identified himself / herself as a/the Service Agent at an address of 1833 S MORGAN RD, OKLAHOMA CITY OK 73128 which is identified as a

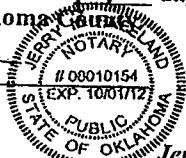
I completed the above service in the following manner:

- ☐ PERSONAL SERVICE: By delivering said process to the above named person(s).
- ☐ RESIDENTIAL SERVICE: By leaving a copy of said process for the above named, at their usual place of abode or dwelling, with an individual who identified himself / herself as a resident / family member fifteen years of age or older.
- ☐ PERSONAL / RESIDENTIAL SERVICE: By personally delivering a copy of said process to the above indicated person and, additionally, by leaving a copy for _____ with said individual who identified himself / herself as a resident / family member fifteen years of age or older.
- ☒ CORPORATION / PARTNERSHIP / UNICORPORATED ASSOCIATION, ETC. : By delivering a copy of said process for the above named entity, with the person indicated, as required by law.
- ☐ POSTED SERVICE: By affixing a copy of said process at the address indicated, which is believed to be in the possession of the above named individual / entity, in a conspicuous manner as required by law.
- ☐ SERVICE BY MAIL: By mailing a copy of said process to the above named at the address indicated as required by law in the following manner:
- ☐ First Class Mail ☐ Certified Mail ☐ Restricted Delivery ☐ Return Receipt Requested
- ☐ OTHER INFORMATION:

Subscribed and sworn to before me this 16 day of Sept 2010 in Oklahoma County.

Notary Public

(SEAL)



Undersigned declares under penalty of perjury that the foregoing is true and correct.

Signature of Server

PSS 09 95

PS #

Jerry M. Freeland's
LEGAL SUPPORT SERVICES OF OKLAHOMA, INC.
 217 N. Harvey, Suite 405 • Oklahoma City, Oklahoma 73102 • (405) 232-1025
 *** 33 Years of Service ***